

November 3, 1989

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 8-36

"District of Columbia Environmental Policy Act of 1989"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198., "the Act", the Council of the District of Columbia adopted Bill No. 8-8 on first and second readings, June 27, 1989, and July 11, 1989, respectively. Following the signature of the Mayor on July 27, 1989, this legislation was assigned Act No. 8-65, published in the August 11, 1989, edition of the D.C. Register, (Vol. 36 page 5741) and transmitted to Congress on August 4, 1989 for a 30-day review in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C: Law 8-36, effective October 18, 1989.

David R. Clarke
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

August 4
September 6,7,8,11,12,13,14,15,18,19,20,21,22,25,26,27,28,29.
October 2,3,4,5,6,10,11,12,13,16,17 '

DC Act 8-65

In the Council of the District of Columbia

July 27, 1989

To require the Mayor or any District of Columbia board, commission, authority, or person to prepare an environmental impact statement if the Mayor, board, commission, authority, or person proposes or approves an action that, if implemented, is likely to have a significant effect on the quality of the environment; to ensure the residents of the District of Columbia safe, healthful, productive, and aesthetically pleasing surroundings; and to develop a policy to ensure that economic, technical, and population growth occurs in an environmentally sound manner.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Environmental Policy Act of 1989".

Sec. 2. Purpose.

The purpose of this act is to promote the health, safety and welfare of District of Columbia ("District") residents, to afford the fullest possible preservation and protection of the environment through a

requirement that the environmental impact of proposed District government and privately initiated actions be examined before implementation and to require the Mayor, board, commission, or authority to substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating measures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Action" means (i) a new project or activity directly undertaken by the Mayor or a board, Commission, or authority of the District government or (ii) a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government.

(2) "Major action" means any action that costs over 1 million dollars and that may have a significant impact on the environment, except that, subject to the exemptions in section 7, the Mayor, pursuant to rules issued in accordance with section 10, shall classify any action that costs less than 1 million dollars as a major action, if the action imminently and substantially affects the public health, safety, or welfare. The cost level of 1 million dollars shall be based on 1989 dollars adjusted annually according to the Consumer Price Index.

(3) "Environment" means the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora and fauna.

(4) "Hazardous substance" means any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical, or infectious characteristic, as established by the Mayor, may:

(A) Cause or significantly contribute to an increase in mortality or an increase in a serious, irreversible or incapacitating reversible illness; or

(B) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that generate pressure through decomposition, heat, or other means and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

(5) "Lead agency" means the District agency designated by the Mayor to have primary responsibility for the preparation of an Environmental Impact Statement (EIS).

(6) "Functional equivalent" means the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record.

Sec. 4. Environmental Impact Statement requirements.

(a) Whenever the Mayor or a board, commission, authority, or person proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the Mayor, board, commission, authority, or person shall prepare or cause to be prepared, and transmit, in accordance with subsection (b) of this section, a detailed EIS at least 60 days prior to implementation of the proposed major action, unless the Mayor determines that the proposed major action has been or is subject to the functional equivalent of an EIS. The EIS shall be written in a concise manner. The EIS shall describe and, where appropriate, analyze:

- (1) The goals and nature of the proposed major action and its environment;
- (2) The relationship of the proposed major action to the goals of the adopted Comprehensive Plan, requirements as promulgated by the Zoning Commission, and any District or federal environmental standards;
- (3) Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;
- (4) Alternatives to the proposed major action, including alternative locations, and the adverse and beneficial effects of the alternatives;
- (5) Any irreversible and irretrievable commitment of resources involved in the implementation of the proposed major action;
- (6) Mitigation measures proposed to minimize any adverse environmental impact;
- (7) The impact of the proposed major action on the use and conservation of energy resources, if applicable and significant;
- (8) The cumulative impact of the major action when considered in conjunction with other proposed actions;
- (9) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;
- (10) Responses to comments provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and
- (11) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.

(b) The Mayor, board, commission, or authority shall transmit a copy of any EIS prepared pursuant to subsection (a) of this section to the Council, any District agency that has responsibility for implementing the major action or special expertise with respect to any environmental impact involved, and any affected Advisory Neighborhood Commission. A copy of the EIS shall be made available for review by the public in the main office of the agency

primarily responsible for implementing or permitting the proposed major action. The Mayor, board, commission, or authority shall provide a reasonable period consistent with title 1 of the District of Columbia Administrative Procedure Act approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.) ("APA"), for comment on any EIS required to be prepared pursuant to subsection (a) of this section. If 25 registered voters in an affected single member district request a public hearing on an EIS or supplemental EIS or there is significant public interest, the Mayor, board, commission, or authority shall conduct a public hearing pursuant to the rules issued in accordance with section 10(a).

(c)(1) The Mayor, board, agency, commission, or authority of the District government shall determine within 30 days, excluding Saturdays, Sundays, and legal holidays, of receipt of an application for a proposed major action whether an EIS is required, if the action involves the grant or issuance of a lease, permit, license, certificate, or other entitlement by a District agency.

(2) If the Mayor, or a board, commission, or authority of the District government determines that an EIS is not required for a major action that is likely to involve the creation, use, transportation, storage, or disposal of a hazardous substance, the Mayor shall prepare, make available for public inspection, and transmit to the Council a written determination that describes why an EIS is not required prior to the grant or issuance of any applicable lease, permit, license, certificate, entitlement, or permission to act.

(3) If the major action involves the grant or issuance to an applicant of a lease, permit, license, certificate, or other entitlement by a District agency:

(A) The agency shall notify the applicant, in writing, if a determination has been made that an EIS is required. Notice of the determination and the findings that support the determination shall be kept on file by the Mayor.

(B) The Mayor, board, commission, or authority may require an applicant to prepare an EIS. A non-governmental applicant shall be charged a fee to cover the cost of agency review of the EIS. No lease, permit, license, certificate, or other entitlement shall be issued, unless the applicant required to prepare an EIS has completed the EIS in compliance with this act and paid any fee charged pursuant to this paragraph.

(C) The applicant shall assist the Mayor, or the board, commission, or authority at any stage of the review of the proposed major action by timely submitting all relevant information concerning impact, costs, benefits, and alternatives. The Mayor, board, commission, or authority shall deny a proposed action, if the applicant fails to submit relevant information as specified in rules promulgated pursuant to section 10.

Sec.5. Adverse impact findings.

If the EIS identifies an adverse effect from a proposed major action and contains a finding that the public health, safety, or welfare is imminently and substantially endangered by the action, the Mayor, board, commission, or authority of the District government shall disapprove the action, unless the applicant proposes mitigating measures or substitutes a reasonable alternative to avoid the danger.

Sec.6. Supplemental EIS.

(a) The Mayor, or a board, commission, authority, or person shall prepare a supplemental EIS if:

- (1) The agency or applicant makes or proposes a substantial change in the proposed action that is relevant to environmental concerns; or
- (2) There are significant new circumstances or information relevant to environmental concerns that affect the proposed action or the impact of the proposed action.

(b) The supplemental EIS shall be prepared, transmitted, and funded in accordance with the requirements of section 4.

Sec .7. Exemptions to an action.

(a) No EIS shall be required by this act with respect to an action:

(1) For which an EIS has been prepared in accordance with the National Environmental Policy Act of 1969, approved January 1, 1970 (83 Stat. 852'; 42 U.S.C. 4321 et seq.), and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that no impact statement is required due to a finding of significant impact or a finding that the proposed action categorically excluded from consideration;

(2) For which a request has been made for the authorization or allocation of funds for a project that involves only feasibility or planning study for a possible future action that has not been approved, adopted, or funded. The study, however, shall include consideration of environmental factors;

(3) Whose impact on the environment has been considered in the functional equivalent of an EIS;

(4) That has reached a critical stage of completion prior to the effective date of this act and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;

(5) Of an environmentally protective regulatory nature;

(6) Exempted by rules approved pursuant to section 10(a);

(7) Within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia; or

(8) For which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.

(b) The Mayor or a board, commission, authority, or person shall prepare a supplemental EIS for any action exempted pursuant to subsections (a)(1) or (a)(3) of this section, if a substantial and relevant question remains with regard to the impact of the action on the environment that would otherwise be addressed in an EIS prepared in accordance with this act.

Sec.8. Lead agencies; files.

(a) The Mayor shall designate a lead agency to prepare an EIS or supplemental EIS when the preparation of the EIS requires the input of more than 1 agency. The lead agency shall, if necessary, oversee the preparation of a single, omnibus EIS, ensure reasoned consideration of and distinction among any inconsistent conclusions, and promote coordination with public and private organizations and individuals with a special expertise or recognized interest.

(b) The Mayor shall maintain a file of all EIS's and supplemental EIS's for public review.

Sec. 9. Judicial Review.

Where an EIS is prepared in connection with the issuance or approval of a lease, permit, license, certificate, or any other entitlement or permission to act by a District government agency that is subject to administrative or judicial review under applicable laws or regulations, the administrative or judicial review shall be governed by the applicable laws and regulations.

Sec.10. Rules.

(a) Within 180 days of the effective date of this act, the Mayor shall, pursuant to title 1 of the APA, issue proposed rules to implement the provisions of this act, including rules that establish categorical exemptions for major actions that would have no significant impact on the environment. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Within 180 days of the effective date of this act, the Department of Consumer and Regulatory Affairs shall issue rules to assist District agencies in the preparation of an EIS, pursuant to title 1 of the APA.

Sec.11. Construction.

Nothing in this act shall be construed to supercede the requirements of District government zoning statutes and regulations or federal and District government environmental statutes or regulations.

Sec.12. Effective date.

This act shall take effect after a-30-day period of Congressional review following approval by the Mayor (or the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

Signed David E. Carke
Council of the District of Columbia

APPROVED: July 27, 1989

Introduced as Bill 8-8 on Jan. 3, 1989 by Councilmember Winter.

FIRST READING: 6-27-89; Adopted by approved voice vote; Lightfoot absent.

FINAL READING: 7-1f-89; Adopted by approved voice vote; all present.

Transmitted to the Mayor: July 14, 1989